IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 867 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIGVIJAY CEMENT COMPANY LTD. NOW KNOWN AS GUJARAT COMPOSITE - Petitioner(s)

Versus

JAINARAYAN LAXMINARAYAN SHARDA - Respondent(s)

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Appearance :

MR KM PATEL for Petitioner(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1,
MR DA JOSHI for Respondent(s) : 1,
MR GOPAL M PANDYA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/8/2005

C.A.V.JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner namely Shree Digvijay Cement Company Ltd. (hereinafter referred to as “the Management” for convenience) has challenged the legality and validity of the judgment and Award passed by the Labour Court Ahmedabad dtd.24/2/2004.. in Reference (LCA) No.1309 of 1997, by which the Labour Court has directed the petitioner to reinstate the respondent herein (hereinafter referred to as “the workman” for convenience) with 50% back wages w.e.f. 24/4/1997 till reinstatement.

2.It appears from the record that the respondent workman has raised an industrial dispute challenging his termination / dismissal

dtd.17/6/1985 which was referred to the Labour Court, Ahmedabad for its adjudication being Reference (LCA) No.1309 of 1997. It was contended on behalf of the respondent workman before the Labour Curt that he was appointed as a Clerk since 1/1/1979 and that he came to be dismissed by an order dtd.17/6/1985 without holding any inquiry and/or without issuing any Show Cause Notice. The said reference was resisted and opposed by the petitioner Management mainly on the two grounds i.e. [1] the respondent workman was appointed as a Store Officer and that his duty was managerial and supervisory in nature and that he was serving in a supervisory capacity and [2] the dispute was raised after a period of 12 years i.e., in the year 1997 challenging the dismissal order dtd.17/6/1985.

3.The Labour Court, Ahmedabad, on appreciation of evidence and considering the oral as well as

documentary evidences came to the conclusion that the respondent workman was never working in a supervisory capacity but was serving in a clerical capacity and ultimately, the Labour Court negatived the contentions raised on behalf of the petitioner management that he was not a workman as defined under sec.2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act” for convenience) and so far as the objections with regard to delay in raising the dispute is concerned, the Labur Court, considering the delay, did not grant any back wages for the period between 1985 and 1997 and has granted only 50% back wages even from 1997 till reinstatement.

4.Being aggrieved by and dissatisfied with the judgment and Award passed by the Labour Court, Ahmedabad dtd.24/2/2004 in Reference (LCA) No.1309 of 1997, the petitioner management has preferred the present petition under Articles

226 and 227 of the Constitution of India.

5.Mr.Palak Thakkar appearing on behalf of Mr.K.M. Patel, learned advocate for the petitioner management has vehemently submitted that the Labour Court has materially erred in holding that as the respondent herein is a workman within the meaning of sec.2(s) of the ID Act. It is submitted that the respondent workman was working in supervisory capacity and was controlling 12 to 13 persons working in the Stores Department, the Labour Court ought to have held that the respondent is not a workman within the meaning of Sec.2(s)of the ID Act as hew as working in a supervisory capacity and not in a clerical capacity.

6.Relying upon the judgment of the Hon'ble Supreme Court in the case of S.K. Maini Vs. M/s.Carona Sahu Company Limited and ors., reported in AIR 1994 SC 1824, he has submitted

that whether a person is having power to sanction leave or not or even given promotion and/or designation cannot be criteria to decide whether a person is a workman or in supervisory capacity.

7.Relying upon the deposition of one Mr.Trikambhai Bhagubhai Patel Ex.44 who was serving as Stores Assistant, learned advocate has submitted that the respondent workman was controlling 12 to 13 persons working in the stores department and therefore, it cannot be said that the work which was performed by the respondent workman was in a clerical capacity and not in a supervisory capacity. He has also further submitted that the finding recorded by the Labour Court to the effect that the nature of work which was being performed by the respondent was not supervisory in nature, is contrary to the evidence on record and/or not on proper appreciation of the evidence.

8.He has also relied upon the judgment of this Court in the case of Laxmikant Mohanlal Dawda Vs. Servo Drivers Pvt.Ltd., reported in 2000(1) GLH 85 and has submitted that a person will not be included in the definition of who being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees as per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. It is submitted that considering the powers exercised by the respondent, the duties which were being performed by the respondent was of a managerial in nature and therefore, it is submitted that the Labour Court has materially erred in holding that the respondent is a workman within the meaning of Sec.2(s)of the ID Act. With regard to the question of delay, he has argued that the respondent workman has raised the

industrial dispute after a period of 12 years and therefore, the same being a stale claim, the Labour Court ought not to have set aside the order of dismissal which was challenged by the respondent workman after a delay of 12 years. Consequently, he has requested to allow the present petition.

9.Mr.G.M. Pandya, learned advocate appearing on behalf of the respondent workman has submitted that once the Labour Court on appreciation of the evidence has found that the respondent is a workman as defined under sec.2(s) of the ID Act, the said finding of fact is not required to be interfered with at the hands of this Honourable Court in exercise of powers under Articles 226 and 227 of the Constitution of India.

10.Relying upon the judgment of the Honourable Supreme Court in the case of Andhra Scientific

Company Limited Vs. A.Seshagiri Rao and Anr., reported in AIR 1967 SC 408, it is submitted that the functions / duties actually being performed by the respondent workman is a question of facts and when the Labour Court on appreciation of the evidence has come to the conclusion as regards the functions that where actually being performed by the respondent workman that he comes within the definition of workman within the meaning of sec.2(s)of the ID Act, High Court should not interfere with the said finding of fact arrived at by the Labour Court in exercise of the powers under Article 227 of the Constitution of India, except in the cases where there is a clear error on the face of the record.

11.He has also relied upon another decision of the Honourable Supreme Court in the case of Tandur and Navandgii Stone Quarries Pvt. Ltd. Basheerabad,Andhra Pradesh Vs. Their workmen,

reported in 1964 (1) LLJ 787 and submitted that on appreciation of evidence, considering the documentary as well as oral evidences and considering the fact that the appointment of the respondent workman was initially as a Clerk and thereafter as Senior Assistant and there was no order of appointment / promotion as Stores Officer and that the respondent workman was not having any authority either to sanction leave and/or having any supervisory powers, the Labour Court has rightly held that the respondent is a workman as defined under Sec.2(s) of the ID Act. Consequently, he has requested to dismiss the present petition.

12.So far as the contention on behalf of the petitioner management with regard to delay is concerned, it is submitted that considering the facts and circumstances and other proceedings pending between the parties, the Labour Court has even denied the back wages for the period

between 1985 and 1997 and has suitable moulded the relief by not paying the back wages and paid only 50%back wages only for the period from 1997. Consequently, he has requested to dismiss the present petition.

13.Heard the learned advocates appearing on behalf of the parties.

14.It is not in dispute that the appointment of the respondent workman was as a Clerk and thereafter he was appointed as Senior Assistant in the Stores Department. The contention raised on behalf of the petitioner that the respondent was serving as a Stores Officer, however, no appointment order and/or promotion order, appointing / promoting the respondent workman as a Store Officer is produced. Even the witness who came to be examined on behalf of the petitioner management has also admitted that there is no

order appointing the respondent workman as Stores Officer. The petitioner has tried to make out a case in support of his submission that the work and the duties which were performed by the respondent workman was supervisory in nature, by submitting that the respondent workman was controlling 12 to 13 persons working in the Stores Department, is on the basis of deposition of one Mr.Trikambhai Bhagubhai Patel, to the effect that whenever the employees who were working in the Stores Department were required to go out, they were asking the respondent workman for going out.

I have gone through the deposition of said Mr.Trikambhai Bhagubhai Patel as well as deposition of the respondent himself. Mr.Trikambhai Bhagubhai Patel in his deposition has deposed that whenever there was an occasion to get guidance for work, they were taking guidance from the respondent workman and they were getting leave from the respondent

workman whenever the occasion arises to go out on duty. I have also gone through the deposition of the respondent workmen himself. He is cross-examined at length. He has specifically denied having sanctioned any leave and/or authority to give any memo to the employees. On appreciation of the documentary as well as oral evidences, the Labour Court has come to the conclusion and has given the finding that the duties which were being performed by the respondent workman was not supervisory and/or managerial in nature and therefore, the respondent workman is a workman as defined under sec.2(s)of the Act. The said finding is a finding of fact arrived at by the Labour Curt on appreciation of evidence. As held by the Honourable Supreme Court in the case of Andhra Scientific Company Limited (Supra), what functions were actually performed by the employee is a question of facts and when the Labour Court, on appreciation of

evidence has come to the conclusion as regards the functions being performed by the respondent workman and as on the basis thereof, has held that the respondent is a workman as defined under sec.2(s) of the ID Act, the High Court would not interfere with the said finding of fact in exercise of the powers under Article 227 of the Constitution of India,except in those cases where there is a clear error on the face of the record. Here considering the evidence on record, it cannot be said that there is a clear error on the face of the record. While exercising the powers under Article 227 of the Constitution of India, this Court is not required to re-appreciate and/or re-evaluate the evidence on record. Under the aforesaid circumstances, the contentions raised on behalf of the petitioner that the respondent herein is not a workman as defined under sec.2(s) of the ID Act, cannot be accepted, more particularly in view of the

finding of fact recorded by the Labour Court which is on appreciation of evidence, documentary as well as oral. The judgment reported in the case of S.K. Maini Vs. M/s.Carona Sahu Company Limited and ors., Supra) on which the learned advocate for the petitioner has placed reliance is concerned, it is true that whether a person is having power to sanction leave or not and/or given promotion and/or designation, cannot be sole criteria to decide whether a person is a workman or not or his functions is supervisory in nature or not. However, there is other evidence led on the basis of which it can be said that the duties which were being performed by the respondent was not managerial in nature. As stated hereinabove, on appreciation of oral evidence, the Labour Court has held that the respondent is a workman within the meaning of sec.2(s) of the ID Act and therefore, the said finding of fact arrived

at by the Labour Court is not required to be interfered with in exercise of the powers under Articles 226 and 227 of the Constitution of India.

15.So far as the contention raised on behalf of the petitioner with regard to the delay caused in raising the industrial dispute and stale claim is concerned, apart from the fact that the petitioner initially did not challenge the order of making the reference, it is also required to be noted that as held by the Honourable Supreme Court in the case of Ajayab Singh, reported in 1999(2) Scale 508 and in the case of Mahavir Singh Vs. U.P. State Electricity Board, reported in 1999(2) CLR 7, if the dispute is raised belatedly, the court can mould the relief and deny back wages for raising the dispute belatedly. In the case on hand, the Labour Court has moulded the relief considering the delay in raising the dispute

and has not granted any back wages for the interregnum period i.e., for the period between 1985 and 1997 and has awarded only 50% of the back wages even for the period from 1997. Under the circumstances, no interference at the hands of this Court is called for.

16.For the reasons stated hereinabove, the petition fails. The judgment and Award passed by the Labour Court, Ahmedabad dtd.24/2/2004 in Reference (LCA) No.1309 of 1997, is hereby confirmed. Rule is discharged with no order as to costs.

(M.R. SHAH, J.)

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